

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KENNETH FRIEDMAN, #80952,

Plaintiff(s),

v.

LINDA ADAMS, et al.,

Defendant(s).

Case No. 2:13-CV-1345 JCM (CWH)

ORDER

Presently before the court is plaintiff Kenneth Friedman's motion for this court to reconsider its August 1, 2016, order granting defendants Dr. Robert Bannister, Dr. Joseph Hanson, Linda Adams, and Doni Jennings's motion for summary judgment.¹ (ECF Nos. 62, 74, 76). Defendants filed a response (ECF No. 77), and plaintiff filed a reply (ECF No. 78).

First, Federal Rule of Civil Procedure 60(b)(4) allows relief from a final judgment or order when "the judgment is void." Furthermore, "[a] final judgment is 'void' for purposes of Rule 60(b)(4) only if the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law." *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (citing *In re Ctr. Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir. 1985)).

Next, Rule 60(b)(5) allows relief from a final judgment or order when "the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." However, "[t]he moving party must demonstrate . . . 'a significant change either in factual conditions or in law.'" *Clark v. California*,

¹ Plaintiff files the present motion pursuant to Federal Rules of Civil Procedure 60(b)(4)–(6). (ECF No. 76).

1 739 F. Supp. 2d 1168, 1175 (N.D. Cal. 2010) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502
 2 U.S. 367, 384 (1992)).

3 Finally, Rule 60(b)(6) allows relief for “any other reason that justifies relief.” District
 4 courts use Rule 60(b)(6) “sparingly as an equitable remedy to prevent manifest injustice.” *Lal v.*
 5 *California*, 610 F.3d 518, 524 (9th Cir. 2010) (quoting *United States v. Alpine Land & Reservoir*
 6 *Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)). “To receive relief under Rule 60(b)(6), a party must
 7 demonstrate ‘extraordinary circumstances which prevented or rendered him unable to prosecute
 8 [his case].’” *Id.* (quoting *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002)).

9 Plaintiff’s motion fails to demonstrate the applicability of any of these rules. (ECF No.
 10 76). First, plaintiff fails to demonstrate that the court’s judgment was void because there is no
 11 dispute regarding jurisdiction and plaintiff does not successfully indicate that this court “acted in
 12 a manner inconsistent with due process of law.” *Berke*, 170 F.3d at 883. Reviewing the motion
 13 for a possible argument regarding due process, it appears that plaintiff simply disagrees with the
 14 court’s ruling or argues that facts—which were acknowledged by the court—were not accounted
 15 for in the challenged order. (ECF Nos. 74 (mentioning that two teeth needed medical attention
 16 and noting relevant dates), 76).

17 Next, Rule 60(b)(5) does not provide relief because plaintiff failed to show the necessary
 18 “significant change either in factual conditions or in law.” *In re Ctr. Wholesale, Inc.*, 759 F.2d at
 19 1448. In particular, plaintiff cites cases that were either decided previously to the challenged order
 20 or are unhelpful to plaintiff. (ECF No. 76) (citing *Colwell v. Bannister*, 763 F.3d at 1066–68 (9th
 21 Cir. 2014); *Snow v. McDaniel*, 681 F.3d 978, 983 (9th Cir. 2012) *overruled by Peralta v. Dillard*,
 22 744 F.3d 1076 (9th Cir. 2014); *McGuckin v. Smith*, 974 F.2d 1050, 1060–61 (9th Cir. 1992)
overruled by WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997); *Hunt v. Dental*
Dept., 865 F.2d 198, 200 (9th Cir. 1989)).

23 Finally, plaintiff has failed to show any “extraordinary circumstances” that prevented him
 24 from his pursuit of the present case. *See Lal*, 610 F.3d at 524. In conclusion, plaintiff’s invoked
 25 portions of Rule 60 do not allow relief.

26 ...

27 ...

28 ...

1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for
3 the district judge to reconsider the order granting summary judgment (ECF No. 76) be, and the
4 same hereby is, DENIED.

5 DATED January 25, 2017.

6 
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28